

REMARKS

Claims 20, 26, 32 and 34 are canceled without prejudice, claims 35 to 39 are added, and therefore claims 16 to 19, 21 to 25, 27 to 31, 33, and 35 to 39 are currently pending.

Reconsideration of the application is respectfully requested based on the following remarks.

With respect to paragraph 6 of the Final Office Action, claims 16 to 26 and 30 to 32 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,052,471 to Van Ryzin (the “Van Ryzin” reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Claim 16, as presented, reads as follows:

A control device, comprising:

a storage device for storing an audio-output matrix having a plurality of matrix elements, each matrix element associated with a pair of audio sources from a plurality of different audio sources,

including at least first, second and third matrix elements, wherein the first matrix element indicates if a first audio source can interrupt a second audio source, the second matrix element indicates if the second audio source can interrupt a third audio source, and the third matrix element indicates if the third audio source can interrupt the first audio source; and

an arrangement for outputting a selected one of the plurality of audio sources to a common output device,

wherein the control device is configured to manage audio output interruption requests from the plurality of different audio sources as a function of the matrix elements of the audio-output matrix, wherein the managing includes a non-linear mode in which, if indicated by the matrix elements, the first audio source can interrupt the second audio source, the second audio source can interrupt the third audio source, and the third audio source can interrupt the first audio source.

Independent claim 23 includes features like those of claim 16.

The “Van Ryzin” reference does not identically disclose (or even suggest) at least the above-identified claim features. That is, the “Van Ryzin” reference does not disclose a control device that is capable of managing interruption requests from a plurality of different audio sources in a non-linear mode in which, if such priorities are indicated by stored matrix elements, a first audio source can interrupt a second audio source, the second audio source can interrupt a third audio source, and the third audio source can interrupt the first audio source.

The Final Office Action relies upon a combination of FIG. 3 and the discussion at col. 4, lines 32 to 39, and col. 5, lines 30 to 44, of the “Van Ryzin” reference as supposedly disclosing a non-linear audio output priority ranking. However, it is respectfully submitted that the “Van Ryzin” reference discusses nothing more than a conventional linear audio output priority ranking. FIG. 3 of the “Van Ryzin” reference concerns a priority table used to determine which of different active signals has priority and will be provided as an output to an amplifier. It is clear that nothing about the priority ranking of devices 1 to 5 discloses a non-linear interruption mode because devices 1 to 5 (i.e., cd, tape, am/fm, phono, and other, respectively) appear to always having priority ranking 1 to 5 regardless of whatever other devices are active. (The Office Action has not actually asserted that the priority ranking of devices 1 to 5 identically discloses (or even suggests) a non-linear interruption mode.)

The Final Office Action does rely upon the depicted priority ranking of devices 6 and 7 (vid1 and vid2, respectively), as supposedly disclosing a non-linear interruption mode.

However, the depicted priority ranking of devices 6 and 7 also discloses nothing more than a conventional linear priority ranking. For example, FIG. 3 and the discussion at col. 5, lines 30 to 44, indicates that if both vid1 and vid2 are present, or if only vid2 of vid1 and vid2 is present, then vid2 is ranked higher than vid1. FIG. 3 and the col. 5 discussion also indicates that if only vid1 of vid1 and vid2 is present, then vid1 is chosen. However, this relative ranking of vid1 and vid2 is nothing more than a conventional linear ranking. That is, vid2 is always ranked higher than vid1 because the only case in which vid1 is chosen instead of vid2 is the case in which vid2 is not active. Therefore, the depiction and discussion of vid1 and vid2 in the “Van Ryzin” reference is clearly that of a conventional linear priority ranking.

The Final Office Action also indicates that the depiction of FIG. 3 in the “Van Ryzin” appears to be confusing, and purports that such confusing presentation obscures the supposed presence of a disclosed non-linear priority ranking. However, Applicants submit that even if FIG. 3 of the “Van Ryzin” reference is poorly presented and confusing, this does not bolster the Final Office Action’s contention that the “Van Ryzin” reference discloses a non-linear priority ranking. To the contrary, as is made clear by the explanation above, when taken as a whole, nothing about the depictions or discussion of the treatment of the vid1 and vid2 sources in the “Van Ryzin” reference discloses a non-linear priority ranking.

Moreover, the features of independent claims 16 and 23 have been better clarified to indicate the implications of the claimed non-linear priority ranking. That is, claims 16 and 23, as presented, provide that the non-linear mode can include, if such priorities are indicated by stored matrix elements, that the first audio source can interrupt a second audio source, the second audio source can interrupt a third audio source, and the third audio source can interrupt the first audio source. This claim feature is disclosed in the present Application, e.g., in the exemplary embodiment discussed at page 6, lines 16 to 22, of the Substitute Specification, and depicted in FIG. 2, in which, if the first audio source is CD, the second audio source is E-Mail and the third audio source is Traffic Information, then as discussed and depicted, CD has priority over E-mail, E-mail has priority over Traffic Information, and Traffic Information has priority over CD. Nothing in the “Van Ryzin” reference discloses (or even suggests) such a non-linear mode, as provided for in the context of the presently claimed subject matter.

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Therefore, the “Van Ryzin” reference does not disclose the above-discussed features of claims 16 and 23, as presented, and it is respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph 22 of the Final Office Action, claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over the “Van Ryzin” reference in view of U.S. Patent No. 4,306,114 to Callahan (the “Callahan” reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 27 and 28 depend from independent claim 23, and are therefore allowable for essentially the same reasons, since the critical deficiencies of the “Van Ryzin” reference are not cured--and are not asserted to be cured--by the “Callahan” reference. Therefore, withdrawal of the obviousness rejections is respectfully requested.

With respect to paragraph 25 of the Final Office Action, claims 29, 33 and 34 were rejected under 35 U.S.C. § 103(a) as unpatentable over the “Van Ryzin” reference in view of U.S. Patent No. 5,243,640 to Hadley et al. (the “Hadley” reference).

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Claims 29, 33 and 34 depend from independent claims 16 and 23, and are therefore allowable for essentially the same reasons, since the critical deficiencies of the "Van Ryzin" reference are not cured--and are not asserted to be cured--by the "Hadley" reference. Therefore, withdrawal of the obviousness rejections is respectfully requested.

With respect to newly added claims 35 to 39, these claims do not add any new matter and are supported by the present application. Moreover, claims 35 to 39 depend from claim 16, as presented, and are therefore allowable for the same reasons as claim 16, as presented.

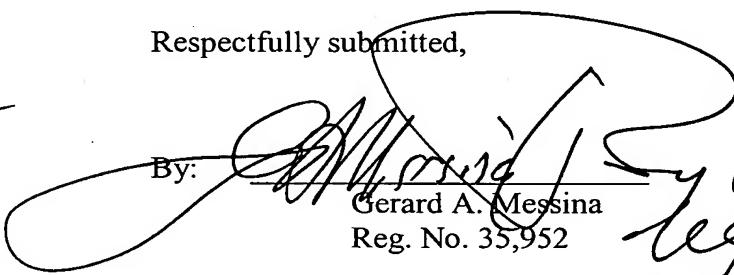
Accordingly, claims 16 to 19, 21 to 25, 27 to 31, 33, and 35 to 39 are allowable.

CONCLUSION

Applicants respectfully submit that all pending claims of the present application are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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